



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable Jennifer E. Niemann  
Hearing Date: Wednesday, July 26, 2023  
Department A – Courtroom #11  
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

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## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.**

1. [21-11814](#)-A-11     **IN RE: MARK FORREST**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
7-22-2021    [[1](#)]

LEONARD WELSH/ATTY. FOR DBT.

NO RULING.

2. [23-10325](#)-A-11     **IN RE: ROBERT CHAMPAGNE**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION  
2-23-2023    [[1](#)]

PETER SAUER/ATTY. FOR DBT.

NO RULING.

3. [23-10325](#)-A-11     **IN RE: ROBERT CHAMPAGNE**  
[FW-5](#)

CONFIRMATION HEARING RE: AMENDED CHAPTER 11 SMALL BUSINESS SUBCHAPTER V PLAN  
5-26-2023    [[122](#)]

PETER SAUER/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:                Confirm if certain changes are made to the plan.

ORDER:                        The minutes of the hearing will be the court's findings  
and conclusions. The Moving Party shall submit a proposed  
order after the hearing.

Robert Thomas Champagne ("Debtor"), the debtor and debtor in possession in this Subchapter V Chapter 11 case, seeks confirmation of his First Amended Subchapter V Plan of Reorganization dated May 24, 2023 ("Plan"). Doc. #122. The hearing to confirm the Plan was set by order of the court filed on May 31, 2023 ("Order"). Doc. #125. In the Order, the court ordered transmission of the Plan, Order, ballots, and notice of the confirmation hearing by June 7, 2023; acceptances or rejections of the Plan, and objections to confirmation by July 5, 2023; and responses to objections, tabulation of ballots, and brief by July 19, 2023. The court finds notice and service of the Plan and related documents were proper and the confirmation hearing should proceed. Doc. ##126, 127. No objections to confirmation of the Plan have been filed.

11 U.S.C. § 1191 governs plan confirmation in Subchapter V. Here, three classes of impaired claims, consisting of three classes of secured claims, did not return ballots accepting the Plan. Thus, confirmation of the Plan must proceed

under 11 U.S.C. § 1191(b). Having reviewed the Plan, the docket in this case, and the evidence in support of confirmation of the Plan, the court is inclined to find that the Plan complies with the requirements for confirmation under Bankruptcy Code § 1191(b) subject to certain changes being made the Plan.

In addition to the stipulated changes to be made to the treatment of Class 2.1 (see Doc. #141), the following changes need to be made to the Plan:

- (1) Paragraph 6.06.3 on page 18 of the Plan should be changed to refer to the Class 6 Claimant, not the Class 7 Claimant;
- (2) In paragraph 6.07.3 on pages 18 and 19 of the Plan, the two references to Class 10 should be changed to Class 7; and
- (3) Paragraph 6.08.2 on page 19 of the Plan should be changed to treat the Class 8 interests as unimpaired because the rights of the equity interest holders are not being impaired under the Plan.

The court finds that the Plan meets the requirements of 11 U.S.C. § 1190. Specifically, the Plan includes a brief history of Debtor's business operations, a liquidation analysis, and projections with respect to the ability of Debtor to make payments under the proposed Plan as required by § 1190(1). The Plan provides for the submission of all or such portion of Debtor's future earnings or other future income to the supervision and control of the Subchapter V Trustee as is necessary for the execution of the Plan as required by § 1190(2). The court finds § 1190(3) does not apply to the Plan.

With respect to § 1129(a)(1), the Plan, with the changes set forth above, complies with the applicable provisions of Chapter 11 and meets the applicable mandatory provisions of 11 U.S.C. § 1123(a). The Plan:

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by § 1123(a)(1). Claims are classified in Classes 1, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3, 4, 5, 6, 7 and 8.
- (2) Specifies the classes that are not impaired under the Plan as required by § 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan as required by § 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by § 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by § 1123(a)(5).
- (6) The provisions of § 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case.
- (7) Contains no provisions inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by § 1123(a)(7).

(8) The provisions of § 1123(a)(8) do not apply in a Subchapter V case.  
11 U.S.C. § 1181.

(9) Provides for the assumption of all executory contracts not expressly rejected by Debtor in accordance with Debtor's sound business judgment as required by § 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith, and complied with the applicable provisions of Chapter 11 as required by § 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by § 1129(a)(3).

Pursuant to § 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and the Subchapter V trustee in connection with the case or the Plan are subject to approval of the court.

The Plan provides that Debtor will manage his financial affairs and implement the Plan, which is consistent with interests of creditors and equity security holders and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

Pursuant to § 1129(a)(7), each holder of a claim or interest in an impaired class has either accepted the Plan or will receive an amount equal to or greater than the amount such holder of a claim or interest would receive in a Chapter 7 case as set forth in the liquidation analysis and based on the motion to value the collateral of the Internal Revenue Service.

Section 1129(a)(8) need not be satisfied if the Subchapter V Plan is confirmed, as here, under § 1191(b).

Pursuant to § 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code § 507(a)(8) to be paid within 60 months from the petition date.

Section 1129(a)(10) need not be satisfied if the Subchapter V Plan is confirmed, as here, under § 1191(b). However, the Plan has been accepted by at least one impaired class who are not insiders. Specifically, Classes 2.1 and 7 have accepted the Plan and are not insiders.

Regarding § 1129(a)(11), payments under the Plan are to be made from future net income from Debtor's commercial landscaping business that Debtor has been operating for over 50 years. Plan Art. II, Doc. #122; Decl. of Robert Thomas Champagne, Doc. #139. The court finds, based on the evidence submitted by Debtor, that the Plan is feasible and confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan.

Section 1129(a)(12) has been satisfied because all fees due under 28 U.S.C. § 1930 have been paid.

Section 1129(a)(13) is not applicable to this case.

Section 1129(a)(14) has been satisfied because Debtor's domestic support obligations are fully provided for in § 6.06 of the Plan.

Sections 1129(a)(15) and (16) are not applicable to this case.

11 U.S.C. § 1191(b) provides in relevant part:

[I]f all of the applicable requirements of section 1129(a) of this title, other than paragraphs (8), (10), and (15) of that section, are met with respect to a plan, the court, on request of the debtor, shall confirm the plan notwithstanding the requirements of such paragraphs if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

11 U.S.C. § 1191(b). For a plan to be fair and equitable with respect to a class of secured claims that is impaired and has not accepted the Plan, the Plan must meet the requirements of § 1129(b) (2) (A). 11 U.S.C. § 1191(b), (c) (1). Pursuant to § 1191(c) (1), with respect to a class of secured claims, the Plan meets the requirements of § 1129(b) (2) (A).

Section 1129(b) (2) (A) provides that a plan is "fair and equitable" with respect to a class of secured claims if the plan provides:

- (1) the secured claimant retains his or her liens securing repayment of the creditor's claim, and
- (2) the secured claimant receives the present value of his or her claim on the effective date of the plan.

The court finds that the Plan is fair and equitable as to Class 3 (Vehicle Center), Class 4 (Section 1129(a) (9) (D) Claim of the Internal Revenue Service) and Class 5 (Non-Priority Claim of the Internal Revenue Service). The Plan satisfies 11 U.S.C. § 1129(b) (2) (A) with respect to Classes 3, 4 and 5 by providing that the respective claim remains fully secured and will be paid in full with interest through 60 monthly payments from the Effective Date with respect to Classes 3 and 5 and 52 monthly payments from the Effective Date with respect to Class 4. Plan §§ 6.03, 6.04, and 6.05, Doc. #122.

The court is inclined to confirm the Plan if certain changes are made to the Plan.

4. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**  
[FW-6](#)

MOTION TO VALUE COLLATERAL OF INTERNAL REVENUE SERVICE  
6-28-2023 [\[134\]](#)

ROBERT CHAMPAGNE/MV  
PETER SAUER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f) (1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f) (1) (B) may be

deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Robert Thomas Champagne ("Debtor"), the debtor and debtor-in-possession in this chapter 11 case, moves the court for an order valuing Debtor's property (the "Collateral"), which is the collateral of secured creditor Internal Revenue Service ("Creditor"). Motion, Doc. #134.

11 U.S.C. § 506(a)(1) limits a secured creditor's claim "to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Creditor has a perfected security interest in "all of debtor(s) right, title, and interest to property" pursuant to 26 U.S.C. § 6321. Motion, Doc. #134; Claim 11-2. Creditor filed an amended proof of claim on April 6, 2023, which asserts it is owed \$1,902,652.10 with a secured amount of \$1,620,870.66. Claim 11-2. Debtor asserts the actual value of Creditor's interest in the Collateral is \$665,667.54 and asks the court for an order valuing the Collateral at \$665,667.54. Decl. of Robert Thomas Champagne, Doc. #136; Ex. A, Doc. #137. Debtor is competent to testify as to the value of the Collateral. Given the absence of contrary evidence, Debtor's opinion of value may be conclusive. Enewally v. Wash. Mut. Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The motion is GRANTED. Creditor's secured claim will be fixed at \$665,667.54. The proposed order shall specifically identify the Collateral, and if applicable, the proof of claim to which it relates.

5. [20-10945](#)-A-12     **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**  
[LKW-8](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
6-30-2023     [\[300\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:     This matter will proceed as scheduled.

DISPOSITION:     Granted.

ORDER:     The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the

respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The Law Offices of Leonard K. Welsh ("Movant"), successor counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of interim compensation in the amount of \$8,245.00 and reimbursement for expenses in the amount of \$75.34 for services rendered from April 1, 2023, through June 30, 2023, pursuant to 11 U.S.C. § 330. Doc. #300. Debtors have no objection to the fees and expenses requested by Movant. Decl. of Jatinderjeet Kaur Sihota, Doc. #302. Movant requests fees and expenses to be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #300; Sihota Decl., Doc. #302; Decl. of Leonard K. Welsh, Doc. #303. This is Movant's fourth fee application in this case. The court has previously approved a total of \$17,519.17 in interim fees and expenses, of which \$17,519.17 have been paid to Movant. Doc. #300. According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #212.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant demonstrates services rendered relating to: (1) conducting legal research regarding opposition to plaintiffs' motion for summary judgment; (2) drafting and revising opposition to plaintiffs' motion for summary judgment; (3) engaging in asset analysis and recovery; (4) preparing fee application; and (5) general case administration. Exs. B & C, Doc. #304. The court finds that the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$8,245.00 and reimbursement for expenses in the amount of \$75.34 to be paid in a manner consistent with the terms of the confirmed plan. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any trust account held.

MOTION FOR COMPENSATION BY THE LAW OFFICE OF LEONARD K. WELSH FOR  
LEONARD K. WELSH, DEBTORS ATTORNEY(S)  
6-30-2023    [\[558\]](#)

LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings  
and conclusions. The Moving Party shall submit a proposed  
order after the hearing.

This motion was filed and served on at least 21 days' notice prior to the hearing date pursuant to Federal Rule of Bankruptcy Procedure 2002 and Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

The Law Offices of Leonard K. Welsh ("Movant"), successor counsel for Bhajan Singh and Balvinder Kaur (collectively, "Debtors"), the debtors in this chapter 12 case, requests allowance of interim compensation in the amount of \$9,160.00 and reimbursement for expenses in the amount of \$193.26 for services rendered from April 1, 2023, through June 30, 2023, pursuant to 11 U.S.C. § 330. Doc. #558. Debtors have no objection to the fees and expenses requested by Movant. Decl. of Bhajan Singh, Doc. #560. Movant requests fees and expenses to be paid by Debtors from wages earned by Debtors and income generated from the operation of their business. Doc. #558; Singh Decl., Doc. #560; Decl. of Leonard K. Welsh, Doc. #562. This is Movant's sixth fee application in this case. The court has previously approved a total of \$18,523.86 in interim fees and expenses, of which \$18,523.86 have been paid to Movant. Doc. #558. According to the order authorizing employment of Movant, Movant may submit monthly applications for interim compensation pursuant to 11 U.S.C. § 331. Order, Doc. #449.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a debtor's attorney in a chapter 12 case. 11 U.S.C. § 330(a)(1), (4)(B). The court may allow reasonable compensation to the chapter 12 debtor's attorney for representing interests of the debtor in connection with the bankruptcy case. 11 U.S.C. § 330(a)(4). In determining the amount of reasonable compensation, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Here, Movant demonstrates services rendered relating to: (1) preparing letter to Debtors regarding chapter 12 plan; (2) conducting legal research regarding opposition to plaintiffs' motion for summary judgment; (3) drafting and revising opposition to plaintiffs' motion for summary judgment (4) conducting legal research on automatic stay; (5) preparing fee application; and (6) general case administration. Exs. B & C, Doc. #561. The court finds that

the compensation and reimbursement sought are reasonable, actual, and necessary, and the court will approve the motion on a final basis.

This motion is GRANTED. The court allows interim compensation in the amount of \$9,160.00 and reimbursement for expenses in the amount of \$193.26 to be paid in a manner consistent with the terms of the confirmed plan. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any trust account held.

7. [23-10571](#)-A-11 **IN RE: NABIEKIM ENTERPRISES, INC.**  
[FW-4](#)

MOTION TO EMPLOY ROOS & MCNABB CPA'S PC AS ACCOUNTANT(S) AND/OR MOTION  
TO PAY  
6-28-2023 [\[74\]](#)

NABIEKIM ENTERPRISES, INC./MV  
PETER FEAR/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted as of May 29, 2023 only.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the non-responding parties in interest are entered. Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has not done here.

Debtor in possession Nabiekim Enterprises, Inc. ("Debtor" or "DIP") moves for authorization to employ Roos & McNabb CPA's PC as DIP's certified public accountant ("Accountant") pursuant to 11 U.S.C. § 327(a) and for approval of a flat fee agreement ("Agreement") with Accountant pursuant to 11 U.S.C. § 328. Doc. #74; Ex. A, Doc. #77.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a). The DIP may, with the court's approval, employ a professional on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis. 11 U.S.C. § 328(a). An application to employ a professional on terms and

conditions to be pre-approved by the court must unambiguously request approval under § 328. See Circle K. Corp. v. Houlihan, Lokey, Howard & Zukin, Inc., 279 F.3d 669, 671 (9th Cir. 2002).

DIP selected Accountant because of Accountant's experience and knowledge in the field of accounting and financial consulting, and DIP believes Accountant possesses the requisite skill, experience, and integrity to provide accounting services to DIP. Decl. of Kaye Kim, Doc. #78. DIP and Accountant have entered into an Agreement dated June 27, 2022, which establishes that Accountant will be paid a flat monthly fee of \$595.00 for the following services: (1) setting up and installing counting system and basic training (if applicable); (2) recording all income and expenses in QuickBooks; (3) reconciling all bank accounts and check registers to the bank statements each month; (4) reconciling credit card accounts to statements each month; (5) reviewing and reconciling payroll records and corresponding tax returns; (6) reviewing, analyzing and reconciling general ledger accounts; (7) preparing and recording all necessary journal entries; (8) preparing and presenting financial statements monthly or quarterly; and (9) reviewing sales journal and preparing sales tax returns (if applicable). Kim Decl., Doc. #78; Ex. A, Doc. #77. DIP has agreed to pay Accountant \$595.00 per month from DIP's funds for the services listed in the Agreement. Kim Decl., Doc. #78. If DIP needs services outside of the scope of the Agreement, such services shall be provided on an hourly basis by either Gary Ohanian (\$195.00 per hour) or Tyler McNabb (\$245.00 per hour), and DIP will file a fee application seeking approval of payment for such services. Kim Decl., Doc. #78; Decl. of Tyler McNabb, Doc. #76.

Accountant has verified that Accountant has no connection with DIP, its creditors, attorneys, any other party in interest, or the United States Trustee, except for Accountant's previous work for DIP. McNabb Decl., Doc. #76. DIP does not owe Accountant for pre-petition work at the time the bankruptcy case was filed. Id. The court finds that Accountant is a disinterested person as defined by 11 U.S.C. § 101(14) and does not hold or represent an interest adverse to the estate.

DIP unambiguously requests pre-approval of the Agreement with Accountant pursuant to § 328. However, the Agreement is a pre-petition contract and is dated June 27, 2022. Pursuant to LBR 2014-1(b)(1), the court will only grant retroactive approval of the Agreement to 30 days before the filing of the motion. To the extent DIP seeks to employ Accountant prior to May 29, 2023, which is 30 days before the motion was filed, DIP must show exceptional circumstances, which has not been done here.

Accordingly, the court will GRANT DIP's motion to employ Accountant to provided services listed in the Agreement pursuant to 11 U.S.C. § 327(a) as of May 29, 2023. To the extent the motion seeks approval to employ Accountant prior to that date, the motion is denied. Further, the court will approve the flat fee Agreement to pay Accountant pursuant to 11 U.S.C. § 328 as of May 29, 2023. To the extent the motion seeks approval of the flat fee Agreement prior to that date, the motion is denied. DIP shall submit a form of order that specifically states that employment of Accountant is as of May 29, 2023 and has been approved pursuant to 11 U.S.C. § 328.

8. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION  
5-8-2022    [\[1\]](#)

NOEL KNIGHT/ATTY. FOR DBT.

NO RULING.

9. [22-10778](#)-A-11     **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**  
[NCK-15](#)

CONTINUED MOTION TO CONFIRM CHAPTER 11 PLAN  
5-30-2023    [\[376\]](#)

COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC/MV  
NOEL KNIGHT/ATTY. FOR DBT.

TENTATIVE RULING:        This matter will proceed as scheduled.

DISPOSITION:            Confirm if amended certificate of service is filed by the  
hearing and if feasibility shown at the hearing.

ORDER:                    The minutes of the hearing will be the court's findings  
and conclusions. The Moving Party shall submit a proposed  
order after the hearing.

Compass Pointe Off Campus Partnership B, LLC ("Debtor"), the chapter 11 debtor and debtor-in-possession in this case, moves the court for confirmation of its Second Amended Plan of Reorganization Dated May 17, 2023 ("Plan"). Doc. #374. The hearing was set pursuant to an order of the court filed on May 24, 2023 ("Disclosure Statement Order"). Doc. #375.

In the Disclosure Statement Order, the court approved the disclosure statement and ordered transmission of the Plan, disclosure statement, notice of the confirmation hearing and Disclosure Statement Order by May 24, 2023. Doc. #375. Any objections to confirmation of the Plan were to be filed and served by June 21, 2023. Id. The court finds that notice and service of the Plan and related documents were proper. See Doc. #383. No objections to confirmation of the Plan have been filed. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition by June 21, 2023 may be deemed a waiver of any opposition to confirmation of the Plan. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

The court continued the motion to confirm the Plan at the initial hearing held on June 28, 2023 to permit Debtor to supplement the record in support of showing the feasibility of the Plan. Although no objection is pending, the court has an independent duty to ensure that chapter 11 plans comply with the requirements of § 1129. In re Las Vegas Monorail Co., 462 B.R. 795, 798 (Bankr. D. Nev. 2011) (quoting 7 COLLIER ON BANKRUPTCY §1129.05[1][e] (Allan N. Resnick & Henry J. Sommer eds., 16th ed.)) ("The court has a mandatory, independent duty to review plans and ensure they comply with the requirements of section 1129.")). The debtor has the burden of proof by a preponderance of

the evidence that the plan complies with the Bankruptcy Code. Acequia, Inc. v. Clinton (In re Acequia, Inc.), 787 F.2d 1352, 1358 (9th Cir. 1986)

As a procedural matter, the certificate of service filed in connection with the supplemental submission by Debtor (Doc. #398) does not include Attachment 6B1 as referenced in Section 6 of the certificate of service form. Based on the certificate of service that was filed, the court cannot determine who was actually served with Debtor's supplemental submission. The court requires that Debtor file an amended certificate of service for with the proper attachment included by the hearing.

As a further procedural matter, the supplemental submission filed by Debtor in support of confirmation does not comply with LBR 9004-2(d), which requires exhibits to be filed as a separate document. Here, the supplemental submission was filed as a single twenty-page document that included the movant's exhibits. Doc. #396. The court encourages counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules. The rules can be accessed on the court's website at <https://www.caeb.uscourts.gov/LocalRules.aspx>.

Having reviewed the Plan, the docket in this case, and the evidence in support of confirmation of the Plan, the court is inclined to find that the Plan complies with the requirements for confirmation under 11 U.S.C. § 1129(a) subject to Debtor adequately addressing the issue regarding the certificate of service of the supplemental pleadings as well as the court's outstanding issues regarding feasibility that are set forth below.

The Plan designates creditors and interests into three classes. Class One consists of the claim of Dakota Note, LLC that was paid in full on October 20, 2022. Class Two consists of the claim of the post-petition lender, Merced DIP Lender, LLC. Class Three consists of any and all non-priority unsecured claims allowed under 11 U.S.C. § 506. All three classes are unimpaired under the Plan.

With respect to section 1129(a)(1), the Plan complies with the applicable provisions of Chapter 11 and meets the mandatory provisions of 11 U.S.C. § 1123(a). The Plan:

- (1) Designates classes of claims other than claims of a kind specified in Bankruptcy Code sections 507(a)(2), 507(a)(3), or 507(a)(8) as required by section 1123(a)(1). Claims are classified as Classes 1, 2 and 3.
- (2) Specifies that none of the classes are impaired under the Plan as required by section 1123(a)(2).
- (3) Specifies the treatment of any class of claims or class of interest which is impaired under the Plan as required by section 1123(a)(3).
- (4) Provides for the same treatment for each claim or interest of a particular class as required by section 1123(a)(4).
- (5) Provides adequate means for the implementation and execution of the Plan as required by section 1123(a)(5).
- (6) The provisions of section 1123(a)(6) of the Code, which relate to the issuance of securities pursuant to a reorganization plan, are not applicable in this case.

- (7) Contains no provision inconsistent with the interests of creditors and equity security holders and public policy with respect to the manner of selection of any officer, director, or trustee under the Plan and any successor to such officer, director, or trustee as required by section 1123(a)(7).
- (8) The provisions of section 1123(a)(8) of the Code, which apply to a case in which the debtor is an individual, are not applicable in this case.
- (9) Provides for the rejection of all executory contracts not expressly assumed by Debtor in accordance with Debtor's sound business judgment as required by section 1123(b)(2).

Debtor, as proponent of the Plan, provided adequate disclosure regarding the Plan to all creditors and interest holders in good faith, and has complied with the applicable provisions of Chapter 11 as required by section 1129(a)(2).

The Plan has been proposed in good faith and not by any means forbidden by law as required by section 1129(a)(3).

Pursuant to section 1129(a)(4), the Plan provides that payments made or to be made to Debtor's attorneys and other professionals in connection with the case or the Plan are subject to approval of the court.

With respect to section 1129(a)(5), the Plan provides that Debtor will manage its financial affairs and implement the Plan, which is consistent with interests of creditors and with public policy as required by § 1129(a)(5).

Section 1129(a)(6) is inapplicable and no changes in regulatory rates are provided for in the Plan.

There are no impaired classes in the Plan so section 1129(a)(7) is not applicable.

With respect to section 1129(a)(8), all classes are not impaired and are conclusively presumed to have accepted the Plan. See 11 U.S.C. § 1126(e).

Pursuant to section 1129(a)(9), the Plan provides for treatment of claims under Bankruptcy Code section 507(a)(2). There are no other priority unsecured claims.

There are no impaired classes in the Plan so section 1129(a)(10) is not applicable.

Regarding section 1129(a)(11), the court needs additional information before determining that the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of Debtor or any successor to Debtor under the Plan as required by section 1129(a)(11). At the confirmation hearing, Debtor should be prepared to address the following outstanding issues that the court has with respect to feasibility:

- (1) One of the main purposes of the post-petition loan was to permit Debtor to construct an apartment complex in Merced. However, the evidence submitted in support of the Plan does not explain to the court the status of construction of the apartment complex. Debtor should be prepared to make an offer of proof at the continued confirmation hearing as to the status of construction of the apartment complex, including when construction is expected to be completed and whether the construction project is currently on, under, or over budget.

- (2) As part of the supplemental evidence in support of feasibility, Debtor submitted a listing agreement that is effective as of February 1, 2023. Ex. A, Doc. #396. The court is unaware of any request filed by Debtor in this bankruptcy case to employ the listing agent. At the hearing, Debtor should be prepared to explain to the court why the listing agent has not been employed by the estate. Debtor also should be prepared to make an offer of proof regarding the type of marketing that has been conducted with respect to selling the apartment complex as well as the amount of interest in a possible sale of the apartment complex.
- (3) As an alternative to selling the apartment complex, Debtor proposes to refinance the apartment complex. Debtor should be prepared to make an offer of proof regarding what steps Debtor has taken to assure itself that it will be able to refinance the apartment complex in the time period required by the Plan.

Regarding section 1129(a)(12), it appears Debtor is current on all United States Trustee's fees, and the Plan provides for payment of all post-confirmation quarterly fees until the entry of a Final Decree.

Sections 1129(a)(13)-(16) are not applicable in this case.

Because the court finds that confirmation is proper under Bankruptcy Code section 1129(a), it is not necessary to confirm the Plan under Bankruptcy Code section 1129(b).

Accordingly, the court is inclined to confirm the Plan if Debtor adequately amends the certificate of service of the supplemental pleadings and can supplement the record to meet its burden of proof regarding feasibility.

10. [23-11178](#)-A-12      **IN RE: MARK FORREST**  
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION  
5-31-2023    [\[1\]](#)

NOEL KNIGHT/ATTY. FOR DBT.  
DISMISSED 6/28/23

FINAL RULING:      There will be no hearing on this matter.

DISPOSITION:      Dropped as moot.

ORDER:              The court will issue an order.

An order dismissing this case was entered on June 28, 2023. Doc. #47.  
Therefore, this status conference will be DROPPED AS MOOT.

1. [23-10927](#)-A-7     **IN RE: JOSEPH BISHOP AND LINDSAY DUPREY**  
[PFT-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING  
OF CREDITORS  
6-6-2023    [[13](#)]

MICHAEL REID/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Conditionally denied.

ORDER:             The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtors shall attend the meeting of creditors rescheduled for  
August 14, 2023 at 3:00 p.m. If the debtors fail to do so, the chapter 7  
trustee may file a declaration with a proposed order and the case may be  
dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee  
and the U.S. Trustee to object to the debtors' discharge or file motions for  
abuse, other than presumed abuse, under § 707, is extended to 60 days after the  
conclusion of the meeting of creditors.

2. [23-11078](#)-A-7     **IN RE: ROLANDO/CECILIA ALONZO**  
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
6-28-2023    [[14](#)]

GLOBAL LENDING SERVICES LLC/MV  
ROSALINA NUNEZ/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance  
with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local  
Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors,  
the U.S. Trustee, or any other party in interest to file written opposition at  
least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be  
deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v.  
Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not  
materially alter the relief requested by the moving party, an actual hearing is  
unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006).  
Therefore, the defaults of the above-mentioned parties in interest are entered

and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a movant make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, Global Lending Services LLC ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(2) with respect to a 2015 Infiniti QX80 (the "Vehicle"). Doc. #14.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtors do not have any equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay because the debtors have failed to make at least four complete pre- and post-petition payments. Movant has produced evidence that the debtors are delinquent by at least \$2,289.48. Decl. of Paul A. Peay, Doc. #16. The moving papers also show the Vehicle is a depreciating asset and there is lack of insurance.

The court also finds that the debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because the debtors are in chapter 7. The Vehicle is valued at \$21,650.00 and the debtors owe \$28,912.38. Peay Decl., Doc. #16.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit Movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the debtors' Statement of Intention, the Vehicle will be surrendered. Doc. #1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the debtors have failed to make at least four pre- and post-petition payments to Movant, the Vehicle is a depreciating asset, and there is a lack of insurance on the Vehicle.

MOTION TO COMPEL ABANDONMENT  
7-11-2023    [\[12\]](#)

KRISTINA PECK/MV  
BENNY BARCO/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                Granted.

ORDER:                        The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was filed and served on at least 14 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

Kristina N. Peck ("Debtor"), the debtor in this chapter 7 case, moves the court pursuant to 11 U.S.C. § 554 to order the chapter 7 trustee to abandon sole proprietorship business assets known as work supplies (the "Property") that are property of the estate. Doc. #12. Debtor asserts that she has no non-exempt equity in the Property and the Property therefore has no value to the bankruptcy estate. Doc. #12; Decl. of Kristina N. Peck, Doc. #14.

11 U.S.C. § 554(b) permits the court, on request of a party in interest and after notice and a hearing, to order the trustee to abandon property that is burdensome to the estate or of inconsequential value and benefit to the estate. Vu v. Kendall (In re Vu), 245 B.R. 644, 647 (B.A.P. 9th Cir. 2000). To grant a motion to abandon property, the bankruptcy court must find either that the property is (1) burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. Id. (citing In re K.C. Machine & Tool Co., 816 F.2d 238, 245 (6th Cir. 1987)). However, "an order compelling abandonment [under § 554(b)] is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset. . . . Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." Id. (quoting K.C. Machine & Tool Co., 816 F.2d at 246).

Here, Debtor does not allege that the Property is burdensome to the estate. Doc. #12. Therefore, Debtor must establish that the Property is of inconsequential value and benefit to the estate. 11 U.S.C. § 554(b); Vu, 245 B.R. at 647. Debtor's Property is valued at \$1,000.00 and is unencumbered by liens. Schedule D, Doc. #1; Peck Decl., Doc. #14. Under California Civil Procedure Code § 704.730, Debtor claimed a \$1,000.00 exemption in the Property. Schedule C, Doc. #1; Peck Decl., Doc. #14. The court finds that Debtor has met her burden of establishing by a preponderance of the evidence that the Property is of inconsequential value and benefit to the estate.

Accordingly, pending opposition being raised at the hearing, this motion will be GRANTED. The order shall specifically identify the property abandoned.